BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF: **WESTIN CHILDS, D.O.,** Holder of License No. 6795 For the practice of osteopathic medicine in the State of Arizona.	**Case Nos.: DO-17-0087A** **DO-17-0190A** **ORDER FOR SURRENDER OF LICENSE AND CONSENT TO THE SAME**

Westin Childs, D.O. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for Surrender of License and Consent to Same; admits the jurisdiction of the Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board") as well as the facts stated herein; and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board of Osteopathic Examiners in Medicine and Surgery ("Board") is empowered, pursuant to A.R.S. § 32-1800, *et seq.* to regulate the licensing and practice of osteopathic medicine in the State of Arizona.

2. Westin Childs, D.O. ("Respondent") holds License No. 6795 issued by the Board to practice as an osteopathic physician.

Case No. DO-17-0087A

3. On or about March 20, 2017, the Board initiated case no. DO-17-0087A after receiving a complaint from patient RG, a 36 year old female, regarding services Respondent provided to her in connection with a weight loss program she purchased from Respondent.

4. RG joined Respondent's weight loss program in September of 2016. RG paid Respondent $997.00 for an initial consultation and agreed to pay $193.00 per month for the weight loss program.

5. Respondent's initial visit with RG occurred on October 6, 2016. At that time, RG resided in Kentucky. RG alleged that the initial visit occurred via telephone and follow-up consultations were by email. Respondent initially reported that that the initial visit was via telephone but later claimed that it occurred via a real time computer telemedicine encounter while he was physically present in Arizona. Respondent's medical records for RG do not document any written or verbal consent by RG for a telemedicine examination. Respondent was not licensed to practice medicine in Kentucky.

6. There is no indication in RG's medical records that Respondent provided RG with his license number or the Board's address.

7. Following the initial visit and based on RG's laboratory results, Respondent formulated a treatment plan for RG and prescribed medication to her.

8. RG did not have any follow-up visits with Respondent. RG alleged that she became dissatisfied with Respondent's services and stopped the monthly program payments. Respondent claimed that his office was unable to collect any payments after the initial payment from RG due to insufficient funds.

9. The standard of care requires a physician who prescribes medication to a patient to conduct a physical examination of the patient prior to prescribing the medication. The physical examination may be conducted during a real-time telemedicine encounter with audio and video capability provided that the physician obtains and documents the patient's informed consent for the telemedicine encounter in the patient's medical record and provides the patient the physicians license number and the Board's address.

10. Respondent deviated from the standard of care by failing to conduct either an in-person or real-time telemedicine physical examination of RG prior to prescribing medication to her. There is no documentation in Respondent's medical records for RG indicating that Respondent obtained RG's written or verbal consent for a physical examination done via a telemedicine encounter and RG alleged that her initial visit with Respondent occurred via telephone.

11. The standard of care requires a physician to perform and document a complete medical history and physical examination of a patient at the patient's initial visit, either in person or through a real-time telemedicine encounter. Respondent deviated from the standard of care by failing to perform an adequate physical examination of RG at her initial visit because the initial visit was conducted via telephone. Additionally, Respondent failed to record RG's height and weight at the time of her initial visit. Respondent's failure to perform a physical examination may have resulted in an incorrect diagnosis as a result of insufficient information because Respondent failed to perform a physical examination of RG.

Case No. DO-17-0190A

12. On or about July 17, 2017, the Board initiated case no. DO-17-0190A after receiving information from the Arizona Department of Health Services ("ADHS") alleging that Respondent failed to review patients' profiles on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database ("CSPMP") prior to issuing certifications to the patients for the medical marijuana program.

13. The information from ADHS alleged that for the period between July 1, 2015 and December 31, 2016, Respondent issued certifications to 70 qualifying patients for the medical marijuana program but did not review any of the patients' CSPMP profiles.

14. As part of the Board's investigation of case no. DO-17-0190A, the Board subpoenaed medical records of patients who Respondent qualified for the medical marijuana program. The Board's Medical Consultant reviewed the medical records of six patients—JC, NE, MG, AB, SE, ET.

15. In 2015, Respondent diagnosed the six patients with debilitating medical conditions that qualified them for medical marijuana.

16. The records received by the Board for patients SE, MG and ET, included a written certification by Respondent that he "conducted an in-person physical examination of the qualifying patient within the last 90 calendar days appropriate to the qualifying patient's presenting symptoms and the debilitating condition I diagnosed or confirmed" and "reviewed

the qualifying patient's medical records, including medical records from other treating physicians from the previous 12 months; the qualifying patient's responses to conventional medications and medical therapies; and the qualifying patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database." The Board did not receive a written medical marijuana certification for patients JC, NE or AB in response to its subpoena.

17. There is no documentation in SE's, MG's or ET's medical records indicating that Respondent reviewed the patients' CSPMP profiles prior to issuing the medical marijuana certifications. Respondent admitted to the Board that he did not query the CSPMP profiles for any of the six patients prior to qualifying them for medical marijuana. Respondent also admitted that it was not his practice to review any patient's CSPMP profile unless he had a suspicion that the patient was malingering or engaging in foul play.

18. There is no documentation in SE's, MG's or ET's medical records or the medical records for JC, NE or AB indicating that Respondent performed a physical examination prior to qualifying the patients for medical marijuana.

19. There is no documentation in SE's, MG's or ET's medical records indicating that Respondent reviewed any of the patients' medical records from previous providers prior to qualifying them for medical marijuana.

20. There is no documentation in SE's, MG's or ET's medical records indicating that Respondent reviewed the patient's responses to conventional medications and medical therapies prior to qualifying them for medical marijuana.

21. The standard of care requires a physician perform a physical examination of a patient prior to formulating a diagnosis and treatment plan. There is no documentation in the JC's, NE's, MG's, AB's, SE's or ET's medical records indicating that Respondent performed a physical examination on the patients prior to diagnosing them with a debilitating condition.

22. Respondent is required to maintain adequate medical records for his patients that are legible and contain sufficient information to support his diagnosis. Respondent's medical

records for NE, MG, AB, SE and ET do not contain sufficient documentation in the medical records supporting Respondent's diagnosis of a debilitating medical condition that qualified the patients for medical marijuana. Additionally, parts of the medical records are illegible.

23. Respondent ceased practicing medicine in late 2017.

CONCLUSIONS OF LAW

1. The Board may accept the surrender of an active license from a physician who admits in writing to an act of unprofessional conduct. A.R.S. § 32-1855(L).

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1854(6) ("Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard.");

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.RS. § 32-1854(15) ("Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or when applying for or renewing privileges at a health care institution or a health care program.");

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1854(21) (Failing or refusing to establish and maintain adequate records on a patient....");

5. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.RS. § 32-1854(39) ("Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.").

ORDER

IT IS HEREBY ORDERED THAT Respondent immediately surrender License No. 6795, issued to Westin Childs, D.O., for the practice of osteopathic medicine in the State of Arizona, and return his certificate of licensure to the Board.

ISSUED THIS 13 DAY OF April, 2019.

STATE OF ARIZONA
BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: _____
Barbara Prah-Wix, D.O.
Interim Executive Director

CONSENT TO ENTRY OF ORDER

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

3. By consenting to this Order, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Order in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Order.

4. The Order is not effective until approved by the Board and signed by its Interim Executive Director.

5. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

6. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Interim Executive Director, Respondent may not revoke the consent to the entry of the Order. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

7. This Order is a public record that will be publicly disseminated as a formal disciplinary action of the Board and will be reported to the National Practitioner's Data Bank and on the Board's web site as a disciplinary action.

8. If the Board does not adopt this Order, Respondent will not assert as a defense that the Board's consideration of the Order constitutes bias, prejudice, prejudgment or other similar defense.

9. ***Respondent has read and understands the terms of this agreement.***

Dated: 3/4/19

Westin Childs, D.O.

Executed copy of the foregoing "Order for Surrender of License and Consent to Same" sent via mail this 13 day of April, 2019 to:

Westin Childs, D.O.
Address of Record

Copy of the foregoing "Order for Surrender of License and Consent to Same" sent via e-mail this 13 day of April, 2019 to:

Mary DeLaat Williams, Assistant Attorney General
Jeanne Galvin, Assistant Attorney General
Office of the Attorney General SGD/LES
2005 N. Central Avenue
Phoenix, AZ 85004

#7694470